



State of California
Franchise Tax Board

FAQs

Frequently Asked Questions

About the Income Taxation of Native Americans

1 What is Indian country?

Indian country is:

- All land within any Indian reservation under the jurisdiction of the United States Government, including rights-of-way running through the reservation.
- All dependent Indian communities within the borders of the United States under the jurisdiction of the United States Government.
- All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the allotments.

2 If I live in California Indian country, am I considered a California resident?

Yes. Even if you live in Indian country, you are considered a California resident.

3 I am Native American. Are my earnings exempt from California income tax?

Generally, California taxes the entire income of residents of the state and the California source income of non-residents. If you meet all of the following requirements, your income is exempt from California income tax:

- You must be a tribal member. For a list of federally recognized Indian Tribes, go to the IRS Website at **www.irs.gov**. Search for Internal Revenue Service Bulletin Number 2002-42, Rev. Proc. 2002-64, page 718.
- You must live in your Tribe's Indian country. Indian country includes reservations, dependent Indian communities, and Indian trust allotments.
- The income you earned must be sourced in the same Indian country in which you live and where you are a Tribal member.

4 What if I meet all of the requirements to be exempt from California taxation and also earn income from sources outside of Indian country?

Your Indian country income is exempt from California taxation if you meet the requirements. However, California taxes income you earn outside of Indian country. This includes income you earn from tribes of which you are not member or income you earn outside of California.

5 What if all my income is from Indian country sources, but I live outside Indian country?

If you live outside of Indian country and within California, California taxes all income including income from Indian country sources.

6 What if my only income is from sources outside Indian country or from sources outside California?

For California purposes, your entire income is taxable. California taxes the entire income of residents.

7 I am on active duty status with the U.S. military. My station is in California, but my military orders require me to live outside Indian country. Does California tax my military pay if I am a member of a California tribe?

No. California treats members of California tribes on active duty status as if they live within Indian country. California considers your military income to come from tribal sources. California does not tax your military income.

8 What if I live outside of California, but I receive casino income from California Indian country sources?

If you are a nonresident Native American, California does not tax your share of income from tribal casino operations. California may tax other income, such as wages you receive from California sources while a nonresident. For more information about California residency, get FTB Publication 1031, *Guidelines for Determining Resident Status*.

9 Do I have to file a California income tax return if I live in California Indian country and all of my income is from the Indian country source where I live as a tribal member?

No. California does not require you to file an income tax return. However, we recommend you file the return to show the amount of exempt income as an adjustment on Form 540, Schedule CA. Also, if your income source withholds tax from that income, you must file a California resident income tax return to obtain a refund of the withholding amount.

10 What documents should I attach to my California income tax return?

Attach copies of federal Form 1099, *Miscellaneous Income*, and Form W-2, Wage and Tax Statement, that show the details of your tribal income and non-tribal income.

11 Should I attach a declaration regarding my tribal membership, income sources, and place of residence?

No. Do not attach additional documents to your return. If you claim some or all your income is exempt from California tax, show the adjustments on your Form 540, Schedule CA, California Adjustments, other income line. If you use a P.O. Box, please list your physical address in the blank spaces we provide on the Form 540, Schedule CA, other income line.

12 Should I keep certain documents for state income tax purposes?

Yes. Keep documents that establish your tribal source of the income and documents that establish your place of physical residence. You will need the information if we examine the income exclusion for earned income from Indian country sources. If we contact you and request this information, you must respond in a timely manner even if you believe your income is exempt and/or you did not file a California income tax return.

13 What documents should I keep to support my income exclusion for income I earned in my tribe's Indian country?

- Federal Form 1099-Misc and Form W-2, if you did not attach them to your California return.
- Your federal tax return if you did not attach it to your California return.
- The declarations page from your homeowners or renters insurance policy showing your Indian country address.
- The declarations page from your automobile insurance policies showing your Indian country address.
- Department of Motor Vehicles documents showing your Indian country address (California driver's license and any vehicle registrations).
- Utility statements showing your Indian country address, or a letter from a utility company that shows:
 - Customer and mailing address
 - Service address
 - Timeframe the utility provided service at that address
- Any other documents you believe verify or establish your residence such as school records.

14 If I am living with my parents, another relative, or a friend in my Tribe's Indian country, what other documents might I need available for an examination?

Gather the following documents at the time you file your California return:

- A declaration by your parents, relative, or friend that shows:
 - Physical address of your living accommodations
 - The period when you lived there
- Utility statements, or a letter from a utility company that shows:
 - Your parents', relative's, or friend's customer mailing address
 - Service address
 - Timeframe the utility provided service at that address
- Any other documents you believe verify or establish your residence, particularly if the document lists your name. See the list in the answer to question 13.

Note: Examinations are conducted to determine tax liabilities and filing requirements.

15 Can my tribe verify I live in Indian country?

We do not require proof from your tribe. If you get the documents from your tribe, it is not enough for your tribe to merely report your primary address or address of record.

You must provide documents that support where you claim to live and the time period you lived at that location.

16 I own two homes, one of which is a rental outside Indian country. If I possess a home in Indian country, is possession sufficient to make my income exempt from tax?

No. You must show that your Indian country residence is the residence in which you lived during the period in question. In addition to the documents you need for your primary home, save documents that pertain to your second home. For example, keep your lease agreements that list your tenants or utility bills in your tenants' names.

17 I am married and my spouse and I live in his or her tribe's Indian country. Is the per capita distribution from my tribe exempt from tax?

No. You must live in your own tribe's Indian country for your income to be exempt from California taxation.

18 Where can I get additional tax information?

Website: **www.ftb.ca.gov**

Telephone: (800) 852-5711

Assistance for persons with disabilities: We comply with the Americans with Disabilities Act. Persons with hearing or speech impairments, please call TTY/DDD (800) 822-6268.

19 How can I request tax forms and publications?

Website: **www.ftb.ca.gov**

Telephone: (800) 338-0505

Mail: TAX FORMS REQUEST UNIT
FRANCHISE TAX BOARD
PO BOX 307
Rancho Cordova CA 95741-0307